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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,993	07/10/2001	Arnold M. Escano	ENDOV-51641	7940

24201 7590 07/16/2003

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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,993

Applicant(s)

ESCANO ET AL.

Examiner

Javier G. Blanco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22, and 23 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 22, 2003 has been entered.

Drawings

2. The Examiner approves the proposed drawing corrections of Figures 2, 3, and 7 (filed on September 30, 2002 and entered as Paper # 6). A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

3. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Objections

4. Claims 1, 5, 15, and 17 are objected to because of the following informalities:
- a. Regarding claim 1, please add --device-- after "shoe" (see line 6; second occurrence).
 - b. Regarding claim 5, please substitute "both in" (see line 2) with --both an--.
 - c. Regarding claim 15, please add --through-- after "plurality of" (see line 2).
 - d. Regarding claim 17, please add --through-- after "plurality of" (see line 1).

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Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 17, 19, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 17, “the plurality of holes” (see line 1) lacks antecedent basis.

b. Regarding claim 19, claim limitation “to maintain in a spaced relationship” (see line 7) is confusing and renders the claim vague and indefinite. Examiner respectfully suggests adding -- the struts-- after “to maintain”. Claim 22 depends on claim 19.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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8. Claims 1-13 and 18-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shull et al. (US 6,143,022). Shull et al. disclose a medical device comprising a body portion and two end cuffs. The medical device further comprises at least one shoe device being configured at one pair of converging struts (see Figures 2 and 7; see Abstract; see column 6, lines 31-43 and lines 52-60; column 7, lines 43-55; see entire document).

9. Claims 20 and 23 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hogan (US 6,569,191 B1). Hogan discloses a medical device (stent) comprising a body portion (i.e., stent body 43) defined by a plurality of pairs of converging struts (i.e., threads 25 and 27) and at least one shoe device (either band 40 or loop 41) configured at one pair of converging struts (see Figures 4 and 6) to maintain the struts in a spaced relationship and to provide structural integrity (see Abstract; see entire document). It should be noted that Hogan also discloses band 40 or loop 41 as permitting converging struts to slide with respect to each other (see column 7, lines 40-67; column 8, lines 8-15).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shull et al. (US 6,143,022) in view of Schmitt (US 5,443,499) and Duffy et al. (US 6,086,611).

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Shull et al. disclose the claimed invention except for the shoe portion not comprising a plurality of holes. However, Schmitt discloses gluing together converging struts (in fact creating a shoe device; see Figure 8) in order to maintain the structural integrity of the stent (see Figure 8; see column 8, lines 16-21; see also entire document). It is inherent that since the converging struts are glue together, each individual strut will be kept inside a hole. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used a shoe device with a plurality of holes, shown and inherent in Schmitt's teaching, with the medical device of Shull et al., in order to maintain the structural integrity of the stent.

Duffy et al. disclose using connectors 9 with through holes, in order to impart a high mechanical strength and maintain the structural integrity of the stent (see Figures 1A, 5A, and 5B; see column 2, lines 35-37; column 4, lines 54-67; column 5, lines 8-13 and lines 59-63; see also entire document). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used a shoe device with through holes, as taught by Duffy et al., with the medical device of Shull et al., in order to impart a high mechanical strength and maintain the structural integrity of the stent.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shull et al. (US 6,143,022) in view of Schmitt et al. (US 5,503,636).

Shull et al. disclose the claimed invention except for not disclosing the shoe device as been made of plastic. However, Schmitt et al. teach a stent with converging struts enclosed or jacketed in plastic in order to impart rubber elastic properties and help maintain the structural integrity of the stent (see Figures 3A and 4; see column 5, lines 18-26 and lines 32-39; see entire document). Therefore, it would have been obvious to a person of ordinary skill in the art at the

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time the invention was made to have used plastic, as taught by Schmitt et al., as Shull et al.'s shoe device material, in order to impart rubber elastic properties and help maintain the structural integrity of the stent.

Response to Arguments

13. Applicant's arguments with respect to claim 23 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

14. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claim 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Lauterjung (US 5,630,829 A), Konya et al. (US 6,123,723 A), Ivancev et al. (US 6,589,275 B1), Leopold et al. (US 2002/0173839 A1).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:00 a.m.-4:30 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB

July 11, 2003


David H. Willse
Primary Examiner